

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF PUERTO RICO

IN THE MATTER OF:

**Emilio Rodríguez Méndez,**

**Debtor(s).**

CASE NO: **10-04317 SEK**

CHAPTER: **13**

Citibank NA,  
Movant,

Emilio Rodríguez Méndez,  
Debtor-Respondent,

Alejandro Oliveras Rivera,  
Trustee

MOTION FOR RELIEF OF STAY UNDER 11 U.S.C. 362

TO THE HONORABLE COURT:

COMES now movant, **Citibank NA**, hereinafter referred to as "CITI", by the undersigned attorney, and very respectfully alleges and prays:

1. Emilio Rodríguez Méndez hereinafter will be referred to as "**the debtor**".
2. CITI, a secured creditor in the above captioned case, has not been offered nor provided adequate protection as required by section 362 of the Bankruptcy Code. Consequently, it moves to request that the automatic stay be lifted in order to continue with the mortgage foreclosure proceedings.
3. The pertinent part of section 362 states that:

(d) On request of a party in interest and after notice and hearing, the court shall grant relief from stay provided under subsection (a) of this section, such as by

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terminating, annulling, modifying, or conditioning such stay-

- (1) For cause, including the lack of adequate protection of an interest in property of such party in interest
- (2) With respect to a stay of an act against property under subsection(a) of this section, if---
  - A) The debtor does not have an equity in such property ; and
  - B) Such property is not necessary to an effective reorganization;

4. CITI, is the holder in due course of a mortgage note in the principal sum of \$77,640.00 bearing interest at 5.50% per annum ("the note"). The indebtedness evidenced by the note is secured by a mortgage executed before the notary public Pedro Rivera Pérez on February 2, 2004, deed number 25 ("the mortgage"). Attached hereto as **Exhibit 1** is a copy of the note and as **Exhibit 2** a copy of a title search or the mortgage deed that evidences CITI's secured status.
5. The debtor's payment plan requires that the debtor make monthly regular post petition payments directly to CITI.
6. The debtor has not made the monthly installments due to movant having incurred in a total of 4 post-petition installments in arrears to CITI amounting to \$3,110.20. Since then the payment for October has accrued for a total amount of arrearage of \$3,687.75. See **Exhibit 3** attached hereto and made part hereof for an itemized statement of the arrearage.
7. The debtor's failure to make payments due under the mortgage note, results in the debtor's material default with the terms of the plan.
8. CITI has not been offered and does not have adequate protection for the above mentioned security interest. Moreover, the debtor has failed to make post petition payments as called for under the terms of the plan. Consequently "cause" exists to lift the automatic stay.

9. In view of the foregoing CITI respectfully requests for an order lifting the automatic stay pursuant to sections 362(d)(1) of the Bankruptcy Code.

10. Attached hereto as **Exhibit 4** is the non military service affidavit required for the entry of an order by default by the Servicemembers' Civil Relief Act, 50 USC Appx. §521.

**WHEREFORE**, CITI respectfully prays that an order be entered authorizing the relief from the automatic stay pursuant to section 362 (d)(1) of the Bankruptcy Code, granting costs, expenses and attorney's fees to CITI and authorizing CITI to proceed with the foreclosure of the mortgage against the property of the debtor, with such further relief as is just and proper.

**RESPECTFULLY SUBMITTED**

I HEREBY CERTIFY that this <sup>th</sup> 21 day of October, 2010 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: the Trustee Alejandro Oliveras Rivera and to the debtor's attorney, José M. Prieto Carballo.

**MARTINEZ & TORRES LAW OFFICES**  
P.O. Box 192938  
San Juan, PR 00919-2938  
Tel. (787) 767-8244: Fax (787) 767-1183

s/ Vanessa M Torres Quiñones

Vanessa M Torres Quiñones  
USDC -PR 217401  
vtorres@martineztorreslaw.com

CITIBANK, N.A..  
ITEMIZED STATEMENT ARREARAGE

EXHIBIT \_\_\_\_\_

CASE NUMBER:	10-04317-SEK13
DEBTOR(s):	EMILIO RODRIGUEZ MENDEZ
LOAN NUMBER:	2686

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Post Petition Payments due	\$2,310.20
Number of Payments	6/1/10 - 9/1/10
Monthly Payment Amount	\$577.55

Bankruptcy Legal Fees and Costs	\$800.00
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Less: Funds in Suspense	\$0.00
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<b>TOTAL AMOUNT OF ARREARAGE</b>	<b><u>\$3,110.20</u></b>
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Principal Balance	\$71,981.44
Per Diem	\$9.86

The subscribing authorized representative of Citimortgage, Inc. (hereinafter "CMI") declares under penalty of perjury that according to the information gathered from CMI's records relating to the above referenced secured loan the foregoing information is true and correct. The subscribing representative of CMI further declares under penalty of perjury that CMI is the holder in due course of the mortgage note secured with the mortgage deed made reference to in the motion for relief from stay and that the original note is in its possession.

Date: 9/29/10

Signature: \_\_\_\_\_

TAVIER GONZALEZ

Authorized Representative



## ESTUDIO DE TITULO

**CASO PARA** : PROFESSIONAL TITLE & ABSTRACT OF FLORIDA  
**ATENCION** : CAROL WHITLOW  
**CASO NUMERO** : 09-03915 PR  
**REFERENTE** : EMILIO RODRIGUEZ MENDEZ  
**FINCA NUMERO** : 42326, inscrita al folio 253 del tomo 1011 de Carolina  
Registro de Carolina, sección II

### DESCRIPCIÓN:

*RUSTICA*: Solar marcado con el número A-1 en el plano de inscripción de la comunidad rural Villa Esperanza I del Barrio Hoyo Mulas del término municipal de Carolina, con una cabida de 391,19 metros cuadrados. En lindes: por el Norte, con solar A-2; por el Sur, con la Calle Iglesias; por el Este, con solar A-22; y por el Oeste, con calle principal Carretera Estatal 874.

### TRACTO:

Se segrega de la finca número 41843, inscrita al folio 90 del tomo 996 de Carolina, a favor del Estado Libre Asociado de Puerto Rico.

### DOMINIO:

Consta inscrita a favor de EMILIO RODRIGUEZ MENDEZ (soltero), quien adquiere de la siguiente manera:

Una parte, estando casado con Ana Morell García, por compra al Estado Libre Asociado de Puerto Rico, por la suma de \$1.00, según Certificación de fecha 27 de octubre de 1980, otorgada por Edgar Méndez Rivera, Director Ejecutivo de la Administración de Vivienda Rural del Departamento de la Vivienda. Inscrita la folio 253 del tomo 1011 de Carolina. Inscripción primera.

El resto de esta finca, en liquidación de bienes gananciales que hiciera con Ana Morell García, con valor de \$37,500.00, según escritura número 24, otorgada en Río Grande, el 2 de febrero del 2004, ante el notario Pedro Rivera Pérez. Inscrita al folio 197 del tomo 1356 (ágora) de Carolina. Inscripción tercera.

### GRAVÁMENES:

Afecta por su procedencia a  
Libre de cargas.

Continúa...

CASO: 09-03915PR  
FINCA: 42326  
PAGINA: 2

Por sí a:

**HIPOTECA:**

Constituida por Emilio Rodríguez Méndez (soltero), en garantía a un pagaré a favor de PAN AMERICAN FINANCIAL CORPORATION, o a su orden, por la suma de \$77,640.00, con intereses al 5.5% anual y vencidero el 1 de marzo del 2034, según escritura número 25, otorgada en Río Grande, el 2 de febrero del 2004, ante el notario Pedro Rivera Pérez. Inscrita al folio 197 del tomo 1356 (ágora) de Carolina. Inscripción cuarta.

**NOTA:** Según nota marginal, se expropia de esta finca una parcela de terreno de 32.570 metros cuadrados a favor de la Autoridad de Carreteras y Transportación de Puerto Rico.

**REVISADOS:** Libro de Embargos, Sentencias, Embargos Federales y Bitácora Electrónica, a 29 de abril del 2009.

**L. J. N. TITLE SEARCH COMPANY, INC.**  
**APARTADO 4511**  
**CAROLINA, PUERTO RICO 00984**  
**Tel. (787) 791-5381 / Fax: (787) 791-5304**



Por: \_\_\_\_\_  
**OFICIAL AUTORIZADO**

*SVL/mg PD36*

**ADVERTENCIA:** El presente informe representa la realidad registral según la información contenida en los Registros Oficiales del Registro de la Propiedad. La bitácora electrónica no es un libro oficial del Registro, por lo tanto no somos responsables de errores u omisiones en su contenido.

Commonwealth of Puerto Rico

FHA CASE NO. 501- 6899285-703

----- MORTGAGE NOTE -----

----- PAGARE HIPOTECARIO -----

US \$ 77,640.00

February 2, 2004

1. "Borrower" means each person signing at the end of this Note, and the  
 1. "Deudor Hipotecario" significa cada persona que firma al final de este Pagaré y sus

person's successors and assigns. "Lender" means PAN AMERICAN FINANCIAL COR-  
 sucesores y cesionarios. "Acreedor Hipotecario" significa PAN AMERICAN FINANCIAL CORPO-

PURATION -----

RATION -----

and its successors and assigns. -----  
 y sus sucesores y cesionarios. -----

2. In return for a loan received from Lender, Borrower promises to pay  
 2. A cambio de un préstamo recibido del Acreedor Hipotecario, el Deudor Hipotecario se

the principal sum of Seventy seven thousand six hundred forty-----  
 obliga a pagar la cantidad principal de setenta y siete mil seiscientos cuarenta-----

Dollars (U.S. \$ 77,640.00-----), plus interest, to the order of the  
 Dólares (U.S. \$ 77,640.00-----), más intereses, a la orden

Lender. Interest will be charged on unpaid principal, from the date of  
 del Acreedor Hipotecario. Se cargará intereses sobre el principal adeudado, desde la fecha

disbursement of the loan proceeds by Lender, at the rate of Five point five-----  
 en que el Acreedor Hipotecario desembolse el producto del préstamo a razón de cinco punto cinco-----

----- percent ( -----5.5 %) per year until the full amount of principal  
 ----- por ciento ( -----5.5 %) anual hasta que el principal haya sido totalmente

has been paid. -----  
 pagado. -----

3. Borrower's promise to pay is secured by a mortgage that is dated the  
 3. La obligación de pagar del Deudor Hipotecario está garantizada por una hipoteca, otor-

same date as this Note and called the "Security Instrument". The Security  
 gada en la misma fecha de este Pagaré, denominada "Hipoteca". La Hipoteca protege al Acree-

Instrument protects the Lender from losses which might result if Borrower  
 dor Hipotecario de pérdidas que podrían resultar si el Deudor Hipotecario incumpliere con los

defaults under this Note. -----  
 términos de este Pagaré. -----

4. (A) Borrower shall make a payment of principal and interest to Lender

4. (A) El Deudor Hipotecario hará un pago principal más intereses, al Acreedor Hipo-

on the first day of each month beginning on April-----, 2004-----, Any  
 tecario el primer día de cada mes, comenzando en abril----- de 2004----- Cualquier prin-

principal and interest remaining on the first day of March-----, 2034----- will  
 cipal más intereses adeudados al día primero de marzo----- del 2034-----, vencerán en esa

be due on that date, which is called the maturity date. -----  
 misma fecha que es denominada la fecha de vencimiento, -----

(B) Payment shall be made at the address notified to Borrower at

(B) El pago será efectuado en la dirección notificada al Deudor Hipotecario en el

closing or at such place as Lender may designate in writing by notice to  
 cierre o en cualquier otro lugar que el Acreedor Hipotecario designe por escrito con notifi-

Borrower. -----

cación al Deudor Hipotecario. -----

(C) Each monthly payment of principal and interest will be in the

(C) Cada pago mensual de principal más intereses será por la cantidad de

amount of four hundred forty dollars with eighty three-- (U.S. \$ 440.83-----),  
 cuatrocientos cuarenta dólares con ochenta y tres centavos-- (U.S. \$ 440.83-----).

This amount will be part of a larger monthly payment required by the Security Instrument, that shall be applied to principal, interest and other items in the order described in the Security Instrument.

5. Borrower has the right to pay the debt evidenced in this Note, in whole or in part, without charge or penalty, on the first day of any month, Lender shall accept prepayment on other days provided that Borrower pays interest on the amount prepaid for the remainder of the month to the extent required by Lender and permitted by regulations of the Secretary. If Borrower makes a partial prepayment, there will be no changes in the due date or in the amount of monthly payment unless Lender agrees in writing to those changes.

5. El Deudor Hipotecario tiene el derecho de pagar la deuda evidenciada por este Pagaré, total o parcialmente, sin recargo ni penalidad, el primer día de cualquier mes. El Acreedor Hipotecario aceptará el prepago cualquier otro día siempre que el Deudor Hipotecario pague intereses en la cantidad prepagada por el resto del mes requerido por el Acreedor Hipotecario.

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6. (A) If Lender has not received the full monthly payment required by the Security Instrument, as described in Paragraph 4 (C) of this Note, by the end of fifteen (15) calendar days after the payment is due, Lender may collect a late charge in the amount of four percent (4.00%) of the overdue amount of each payment.

6. (A) Si el Acreedor Hipotecario no hubiere recibido el pago total mensual requerido por la Hipoteca, tal como se describe en el párrafo 4 (c) de este Pagaré, al cabo de quince días calendarios después del vencimiento del pago, el Acreedor Hipotecario podrá cobrar un recargo por demora en la cantidad de un cuatro por ciento (4.00%) de la suma atrasada de cada pago.

6. (B) If Borrower defaults by failing to pay in full any monthly payment, then Lender may, except as limited by regulations of the Secretary in the case of payment defaults, require immediate payment in full of the principal balance remaining due and all accrued interest. Lender may choose not to exercise this option without waiving its rights in the event of any subsequent default. In many circumstances regulations issued by the Secretary will limit Lender's rights to require immediate payment in full in the case of payment defaults. This Note does not authorize acceleration when not permitted by HUD regulations. As used in this Note, "Secretary" means the Secretary of Housing and Urban Development or his or her designee.

(B) Si el Deudor Hipotecario incumpliere por no efectuar el pago completo de cualquier pago mensual, entonces, el Acreedor Hipotecario podrá, sujeto a las limitaciones reglamentarias del Secretario para el caso de incumplimiento por falta de pago, exigir el pago total inmediato del saldo impagado del principal y de todos los intereses acumulados. El Acreedor Hipotecario podrá elegir no ejercitar esta opción sin renunciar a sus derechos en el caso de cualquier incumplimiento subsiguiente. En muchas circunstancias las reglamentaciones emitidas por el Secretario limitan los derechos del Acreedor Hipotecario para exigir el pago total inmediato por incumplimiento en el pago de plazos vencidos. Este Pagaré no autoriza la aceleración de su vencimiento cuando los reglamentos de HUD no lo permitan. Tal como se usa en este Pagaré, la palabra "Secretario" significa el Secretario del Departamento de Desarrollo Urbano y Vivienda de los Estados Unidos de América o su representante.

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designee.

(C) If Lender has required immediate payment in full, as described  
(C) Si el Acreedor Hipotecario ha exigido el pago total inmediato, según se describe

above, Lender may require Borrower to pay costs and expenses including re-  
anteriormente, podrá requerirle al Deudor Hipotecario que pague costas y gastos, incluyendo  
sonable and customary attorney's fees for enforcing this Note to the extent  
honorarios de abogados razonables y acostumbrados, hasta el máximo por la ley aplicable para  
not prohibited by applicable law. Such fees and costs shall bear interest  
exigir el cumplimiento de este Pagaré. Dichos honorarios, costas y gastos devengarán  
from the date of disbursement at the same rate as the principal of this  
intereses, desde el día de su desembolso, al mismo tipo que el principal de este Pagaré. -----

Note. -----  
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7. Borrower and any other person who has obligations under this Note  
7. El Deudor Hipotecario y cualquier otra persona que esté obligada bajo este Pagaré,  
waive the rights of presentment and notice of dishonor. "Presentment"  
renuncian a los derechos de presentación y aviso de rechazo. "Presentación" significa el  
means the right to require Lender to demand payment of amounts due.  
derecho de requerirle al Acreedor Hipotecario que demande el pago de las cantidades vencidas.

"Notice of Dishonor" means the right to require Lender to give notice to  
"Aviso de Rechazo" significa el derecho de requerirle al Acreedor Hipotecario notificar a  
other persons that amounts due have not been paid. -----  
otras personas que las cantidades vencidas no han sido pagadas. -----

8. Unless applicable law requires a different method, any notice that  
8. Salvo que el Derecho aplicable requiera un método distinto, cualquier notificación que  
must be given to Borrower under this Note will be given by delivering it or  
deba hacerse al Deudor Hipotecario bajo este Pagaré se hará mediante entrega o por correo de  
by mailing it by first class mail to Borrower at the Property address below  
primera clase, dirigida al Deudor Hipotecario, a la dirección de la Propiedad a bajo indicada  
or at a different address if Borrower has given Lender a notice of Borrow-  
o a una dirección diferente, si el Deudor Hipotecario le ha notificado al Acreedor Hipoteca-  
er's different address. -----  
rio de una dirección diferente. -----

Any notice that must be given to Lender under this Note will be given  
Cualquier notificación que se deba hacer al Acreedor Hipotecario bajo este Pagaré le  
by first class mail to Lender at the address stated in Paragraph 4 (B) or at  
será hecha por correo de primera clase a la dirección expresada en el Párrafo 4 (B) o a una  
a different address if Borrower is given a notice of that different  
dirección diferente si al Deudor Hipotecario le ha sido notificada una dirección diferente. -----  
address. -----  
-----

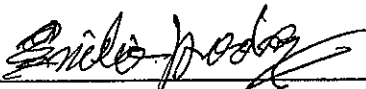
9. If more than one person signs this Note, each person is fully and  
9. Si más de una persona firma este Pagaré, cada una queda total y personalmente obligada  
personally obligated to keep all of the promises made in this Note, includ-  
a cumplir todos los compromisos contralidos en este Pagaré, incluyendo el de pagar la cantidad  
ing the promise to pay the full amount owed. Any person who is a guaran-  
total adeudada. Cualquier persona que sea garantizadora, fiadora o endosante de este Pagaré  
tor, surety or endorser of this Note is also obligated to do these things.  
está también obligada a cumplir lo estipulado. Cualquier persona que asuma estas obligacio-  
Any person who takes over these obligations, including the obligations of a  
nes, incluyendo las obligaciones de un garantizador, fiador o endosante de este Pagaré, tam-  
guarantor, surety or endorser of this Note, is also obligated to keep all  
bién está obligada a cumplir todos los compromisos contralidos en el mismo. El Acreedor  
of the promises made in this Note. Lender may enforce its rights under  
Hipotecario podrá hacer valer sus derechos bajo este Pagaré en contra de cada persona indivi-  
this Note against each person individually or against all signatories  
dualmente o en contra de todos los signatarios conjuntamente. A cualquier suscribiente de

together. Any one person signing this Note may be required to pay all of  
este Pagaré le podrá ser requerido el pago de todas las cantidades adeudadas bajo el mismo. -----  
the amounts owed under this Note. -----

BY SIGNING BELOW, Borrower accepts and agrees to the terms and cove-  
AL SUSCRIBIR este Pagaré al Deudor Hipotecario acepta y está de acuerdo con los térmi-  
nants contained in this Note. -----  
nos y pactos contenidos en el mismo. -----

This Note is secured by a mortgage executed by Deed number-25-  
Este Pagaré está garantizado por Hipoteca constituida por la Escritura número -25-  
of this same date before the subscribing Notary. -----  
otorgada en esta misma fecha ante el Notario suscribiente. -----

In Rfo Grande-----, Puerto Rico, on February 2, ---- 20 04  
En Rfo Grande-----, Puerto Rico, a febrero 2-----de 2004


  
EMILIO RODRIGUEZ MÉNDEZ

Borrower(s)  
Deudor(es) Hipotecario(s)

Property Address  
A-1, 874 ST. VILLA ESPERANZA 1  
CAROLINA, PR 00979


Affidavit Number

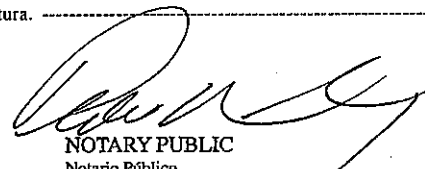
----- Acknowledged and subscribed before me by the above signatories, of the personal -----  
----- Reconocido y suscrito ante mí por los arriba firmantes, de las circunstancias -----  
circumstances contained in the Mortgage deed hereinbefore described, whom I have -----  
personales que se relacionan en la antes descrita escritura de hipoteca, y a quienes -----  
identified as expressed also in said deed. -----  
he identificado según se expresa en la misma escritura. -----

PAY TO THE ORDER OF WITHOUT RECOURSE CITIBANK, N.A.
PAN AMERICAN FINANCIAL CORP.
BY: 

Pay to the order of

without recourse  
CITIBANK, N.A.

By:   
Authorized Signer

  
NOTARY PUBLIC  
Notario Público



Department of Defense Manpower Data Center

Oct-13-2010 14:13:50



Military Status Report  
Pursuant to the Service Members Civil Relief Act

◀ Last Name	First/Middle	Begin Date	Active Duty Status	Active Duty End Date	Service Agency
RODRIGUEZ MENDEZ	EMILIO	Based on the information you have furnished, the DMDC does not possess any information indicating the individual status.			

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard).

*Mary M. Snavelly-Dixon*

Mary M. Snavelly-Dixon, Director  
Department of Defense - Manpower Data Center  
1600 Wilson Blvd., Suite 400  
Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Service Members Civil Relief Act (50 USC App. §§ 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "defenselink.mil" URL <http://www.defenselink.mil/faq/pis/PC09SLDR.html>. If you have evidence the person is on active duty and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. §521(c).

If you obtain additional information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

This response reflects **active duty status** including date the individual was last on active duty, if it was within the preceding 367 days. For historical information, please contact the Service SCRA points-of-contact.

***More information on "Active Duty Status"***

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d)(1) for a period of more than 30 consecutive days. In the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy TARs, Marine Corps ARs and Coast Guard RPAs. Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps) for a period of more than 30 consecutive days.

***Coverage Under the SCRA is Broader in Some Cases***

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate.

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of SCRA extend beyond the last dates of active duty.

Those who would rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

WARNING: This certificate was provided based on a name and SSN provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided.  
Report ID:NNTGV3KU36